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KEY INSIGHTS INTO Open Government & Ethics

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The following information should not be construed as individual or group legal advice. Readers are cautioned to seek individualized legal assistance based on detailed analysis of particular facts and situations.

"Gift" Rules for Public Officials and Employees

The Political Reform Act of 1974 (PRA) regulates the receipt, prohibition, and required reporting of gifts by public officials, designated employees, and consultants. (Gov. Code sections 81000-91014.) The Fair Political Practices Commission (FPPC) defines and enforces the PRA and the gift rules. (Cal. Code Regulations, title 2, sections 18940-18961.)

This resource summarizes the four basic aspects of the rules governing gifts to public officials and others covered by the law:

1. Recognizing a gift.
2. Gift limits and prohibited gifts.
3. Gift reporting.
4. When a gift creates a conflict of interest.

Gift rules apply to elected and appointed public officials. This includes agency employees, consultants and volunteers who are either: (i) "statutory filers" (required to file a Statement of Economic Interests ("SEI") by Gov. Code section 87200); or (ii) "code filers" (required to file an SEI under an agency's conflict of interest code). (Regulations 18940, 18940.1(b).) This information is not directed to lobbyists, lobbyist firms or lobbyist employers.

What is a "Gift?"

A "gift" is any payment or other benefit that provides a *personal* benefit to an official, and the official does not pay for the full value of that benefit. A gift may be a good or service, forgiveness of a debt or obligation, as well as a rebate or discount in price, unless the rebate or discount is offered in the ordinary course of business without regard to the official's status, i.e., it is available to the public. (Gov. Code section 82028; Regulation 18940.)

A gift can be almost anything if it costs money or has a market value. The FPPC interprets "gift" broadly to encompass essentially anything received (including products, services, loans, cash, meals – including food and beverages – tickets, travel or entertainment, etc.) for which fair market value is not paid. Gifts can also include "free advice" from consultants or professionals, tickets or passes to events or entertainment (like concerts, golf or the spa) and flowers, gift baskets or other holiday treats.

The identity of the donor is irrelevant. Anyone, whether an individual or a company, can give a gift that may be reportable or prohibited. The only exceptions are gifts from family members, long-time friends, or gifts from a public agency employer (discussed below). The gift becomes reportable if the gift's source must be identified on an SEI.

Finally, a gift to an official's immediate family may be considered a gift. The PRA considers such gifts reportable if the donor has no established working, social, or similar relationship with the official's family member, or circumstances suggest the donor intended to influence the official. (Regulation 18943) This includes gifts to spouses, dependent minor children, and possibly dependent adult children up until 23.

What is not a "Gift?"

The following includes some of the most common examples of items not considered reportable gifts. This list is not exhaustive; there are certain conditions, as discussed in FPPC Regulation 18942, where there is an exception to the general rule.

- Informational materials, such as books, pamphlets, calendars and periodicals used to convey information to assist in the performance of official duties.
- Gifts from the following family members, unless the donor is acting as an agent or intermediary for any person not among this list:
  - Spouse or former spouse.
  - Children, stepchildren or grandchildren.
  - Parent or grandparent.
  - Sibling.
  - Current or former parent-in-law, brother-in-law or sister-in-law.
  - Nephew, niece, aunt or uncle, including grandnephew, grandniece, great aunt or great uncle.
  - First cousin, including a first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law.
- A campaign contribution required to be reported under the law.
- Any devise or inheritance.
- A personalized plaque or trophy valued at less than $250.
- The cost of home hospitality provided to an official by an individual in the individual's home when the individual is present.
- Gifts that are:
  - Unused and then returned or donated to a 501(c)(3) nonprofit within 30 days of receipt.
  - Exchanged between an official and an individual (but not a lobbyist) on a holiday, birthday or other occasions where

gifts are commonly exchanged, and to the extent that the value of the gifts exchanged are substantially the same value, including food, entertainment and nominal benefits provided to guests at an event.

  - Reciprocal exchanges in a social relationship between the official and another individual (not a lobbyist), with whom the official participates in repeated social events or activities, such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official.
  - From an individual with whom the official has a long-term, close, personal relationship, unrelated to the official's position.

- Admission (where paid admission is required) to an event, food, and nominal items provided as part of the paid admission, to the official where he or she makes a speech, so long as the admission is provided by the person who organizes the event.
- A ticket provided to the official and one guest for admission to a facility, event, show or performance for an entertainment, amusement, recreational or similar purpose at which the official performs a ceremonial role on behalf of his or her agency.
- Gifts received: (i) at a wedding or civil union, (ii) as bereavement-related gifts, (iii) that constitute an "act of neighborliness" or "human compassion," or (iv) in a bona fide dating relationship.
- Costs for travel, lodging and passes received from and through a public agency are normally not considered gifts to the official, though the rules are complex. Generally, transportation, lodging and meals paid for by the public agency when the official is conducting official agency business are considered neither gifts nor income and are thus not reportable on the SEI. Travel and lodging paid by third parties, however, might be considered either gifts or income depending on the circumstances, but are generally not subject to the $630 limitation. If an individual or entity gives tickets or passes to a public agency for distribution by the agency (usually by the manager, superintendent or other executive), and they are used for public purposes, the value of such gifts is not reportable by the official on his or her SEI. Instead, the public agency must complete and file either a Form 801 or a Form 802 and follow certain reporting requirements.

What Does It Mean to "Receive" a Gift?

A gift is considered "received" and "accepted" when an official, or their family member: (i) knowingly takes actual possession of the gift, (ii) is provided the gift's benefit, *or* (iii) takes any action exercising direction or control over the gift. (Gov. Code 89503.5.) "Re-gifting" to another person or entity constitutes receipt of a gift. A gift is not "accepted" if, within 30 days, the official: (i) returns the *unused* gift to the donor; (ii) donates the gift either to a 501(c)(3) nonprofit unrelated to the official or to a local, state, or federal government agency, without claiming the donation as a tax deduction; or (iii) pays for the full value of the gift.

Is It Legal to Accept a "Gift?"

Most gifts are legal so long as the official complies with the reporting requirements and stays below the gift limits. Of course, just because a gift can be accepted does not mean it should be. Whether to accept a gift is a personal decision each public official must make in light of his or her own circumstances, in compliance with special local policies and the expectations of his or her constituents.

It is illegal, however, to **condition a vote or official governmental action on receiving a gift**. This includes offering to vote for or against an agenda item, or to take or refrain from any governmental action (including influencing staff and other elected officials) in exchange for a gift. **This is bribery.** (Penal Code sections 70 (misdemeanor), 85 (felony); see also Education Code section 35230 (misdemeanor).) Any gift considered a bribe, regardless of the amount, creates a disqualifying financial interest under the PRA and Government Code section 1090, preventing the agency from entering into any contract with the donor.

If I Accept a "Gift," What Do I Need to Know?

There are three general considerations when deciding to accept a gift: (i) prohibited gifts, (ii) gifts that must be reported, and (iii) gifts that create a disqualifying conflict of interest under the PRA.

What "Gifts" Are Prohibited?

- Any gift(s) received from a single reportable source with a value greater than $630 within the calendar year. (Gov. Code section 89503, Regulations 18940.2, 18945.1.)
- Honoraria, such as payment for making a speech, publishing an article or attending any public or private conference, convention, meeting, social event, meal or similar gathering.

What "Gifts" Must be Reported?

Any gift(s) received from a single reportable source with a value of $50 or more during the calendar year must be reported on an SEI. (Gov. Code section 87210, Regulation 18940(c).) Public officials should be careful if multiple gifts are received from the same reportable source over the course of a calendar year that total $50 or more (e.g., two $25 gift baskets); receipt of the second gift will trigger the reporting requirement. An official may also partially reimburse the donor, thus reducing the gift's value for reporting purposes.

What "Gift" Creates a Disqualifying Conflict of Interest?

Any gift or combination of gifts from a single donor valued at $630 or more which were received in the 12 months preceding a governmental decision affecting that donor creates a disqualifying conflict of interest under the PRA. (Gov. Code section 87103(e); Regulation 18700(c)(6)(E)) (**Note**: this is different than a calendar year for reporting purposes. For example, an official who receives a $400 gift from a donor in December and another $400 gift the following January will have a disqualifying conflict of interest, but will be below the $630 maximum for the calendar year.)

How Do I Determine a "Gift's" Value?

Gifts are valued at "fair market value" on the day they are received. (Regulation 18940(c).) The donor or retail source may be contacted to provide the gift's value and make a determination.

California Public Records Act

The California Public Records Act ("CPRA") (California Government Code section 79220.000[2], *et seq.)* was passed by the California Legislature in 1968 for government agencies and allows the public to inspect and obtain copies of records from state and local public agencies. The main goal of the CPRA is to provide the public with access to information that allows them to examine government operations. Public agencies are required to disclose records relating to the conduct of the public's business upon request unless there is a legal basis not to do so.

Best Best & Krieger LLP's ("BBK") Advanced Records Center ("ARC"), assists public agencies by providing expert guidance and support on a variety of records-related matters. ARC's team of Certified E-Discovery Specialists leverages cutting-edge technology to provide comprehensive, cost-effective assistance with CPRA processing, policy drafting, training, and document retention.

Who Handles CPRA Requests?

Elected and appointed officials, as well as public agency employees and consultants, and individuals contracting with public agencies are directly responsible for preparing, using, transmitting, and storing public records.

What Is a "Public Record?"

A public record is a document or record related to the public's business that a public agency creates or receives. Under the CPRA, a "public record" is any "writing," regardless of its physical form or characteristics, that contains information related to the conduct of the public's business and is prepared, owned, used, or retained by a public agency. The CPRA's definition of "writing" includes handwriting, typewriting, printing, photographs, photocopies, emails, faxes "and every other means of recording upon any tangible thing, any form of communication or representation... and any record thereby created, regardless of the manner in which the record has been stored." (Section 7920.545[3])

Examples of disclosable public records include:

- Emails regarding a public agency's business
- Claims filed against a public agency
- Employment agreements
- Names and salaries of public employees

[1] As of January 1, 2023, the CPRA has been reorganized and recodified without any substantive change. This resource will show the new numbering with footnote references to the previous numbers. Additionally, unless stated otherwise, all statutory references cite to the California Government Code.

[2] *Formerly* Government Code section 6250 *et seq*.

[3] *Formerly* Government Code section 6252(g)

- Names and pension amounts of retired public employees
- Proposals (after negotiations are complete)
- Expense reimbursements for public officials and public employees
- Settlement agreements
- Contracts between public agencies and third parties
- Geographic Information System (GIS) data (but not the software)
- Permits and licenses issued by public agencies
- Agenda reports, ordinances, resolutions, and public meeting minutes

Best practice: Consider emails, text messages, and photographs regarding the public agency's business as disclosable public records. Keep all communications professional so casual remarks and banter stay off the public record.

Emails and Public Records

Email messages that contain information regarding an agency's official business are public records subject to the CPRA and applicable records-retention laws. However, email messages not pertaining to public business are typically not considered public records, including:

- Personal messages
- SPAM emails, advertisements, or other "junk" messages
- Birthday greetings, invitations to lunch, etc.
- Newsletters or general information from other agencies or vendors

Public officials and staff should refrain from using personal email accounts to discuss official business. If it's unavoidable, the message should be forwarded or "cc'd" to the email address provided by the agency. Emails related to official agency business must be accessible and retained by the agency in accordance with the agency's document retention policy.

Rights to Privacy

Personal privacy is a constitutionally protected right recognized by the CPRA. The legislature acknowledged the importance of individual privacy by creating several exemptions in the CPRA. For instance, the CPRA permits the withholding of personnel, medical, or similar information if releasing the information would infringe upon an

individual's personal privacy, and if the balance of interests favors non-disclosure (Section 7927.700). Similarly, a government employee's personal information is kept confidential, such as home addresses, personal telephone numbers, and birth dates (Section 7928.300).

In some cases, agencies must use a general balancing test to determine whether the right to privacy in a particular instance outweighs the public's interest in accessing the information. In such situations, if personal or intimate information is obtained from a person (e.g., a government employee or appointee, or an applicant for government employment/appointment) as a precondition for the employment or appointment, a privacy interest in such information is likely to be recognized. However, if information is provided voluntarily in a public setting (e.g., a public meeting) or in order to receive a benefit, a privacy right is less likely to be recognized. At times, the decision to disclose depends on whether the invasion of an individual's privacy is significant enough to outweigh the public interest in disclosure.

What Are Public Agencies Required to Do Under the CPRA?

1. Provide Assistance

Public agencies must help requesters make "focused and effective" records requests that reasonably describe identifiable records. This involves assisting in identifying records that are responsive to a request, describing the format in which the records exist (whether electronic or paper-based), outlining the physical location of the records (e.g., offsite storage or the agency's website), and providing suggestions to avoid having the agency deny the request (e.g., warn of any legal privileges that apply to the requested records).

Best practice: Ask the requester for clarification if you're unsure about the type of records being sought. Provide examples or descriptions of the types of records the agency uses to help identify documents or documents that may contain the information sought.

2. Provide Records

Public agencies must make copies of disclosable public records "promptly available" whenever possible and allow inspection of disclosable public records "at all times" during regular business hours. Access is always free. Fees for "inspection" or "processing"

are prohibited[4]. However, the CPRA allows public agencies to review and redact records, when necessary, to delete any portions that are exempt from disclosure before inspection. The CPRA also allows public agencies up to 10 days to determine if it has the records. In specific situations, a public agency may extend the 10 days up to an additional 14 days to make its determination. Those particular situations are when a public agency needs to: (1) search for and collect records from offsite facilities, (2) search for, collect, and examine large volumes of records, (3) consult with another agency about the request, (4) compile data, write a computer program or construct a computer report to extract data, (5) access electronic servers or systems that are inaccessible because of a cyberattack, in order to search for and obtain a record that the agency believes is responsive to a request and is maintained on the servers or systems in an electronic format, or (6) search for, collect, and appropriately examine records during a state of emergency proclaimed by the Governor in the jurisdiction where the agency is located when the state of emergency currently and directly affects, due to the state of emergency, the agency's ability to timely respond to requests due to staffing shortages or closure of facilities where the requested records are located.

Best practice: When other staff members ask for documents for a CPRA request, provide the documents quickly to comply with the CPRA's legal deadlines.

3. Provide a Written Explanation When Records Are Withheld

When a public agency denies a request for records, the denial must be provided in writing and include the specific exemption in the CPRA or other statute. If no specific exemption applies, the denial must give a detailed explanation of why the public interest in withholding the records clearly outweighs the public interest served by disclosure. Moreover, the written denial must also include the names and titles/positions of each person responsible for denying the request.

The CPRA allows certain records to be kept confidential, but this doesn't mean they're completely off-limits to the public. While an

[4] Government Code section 7922.503 (*Formerly* Government Code section 6253(b))

agency can withhold these records, it can also choose to provide greater access. However, the law prohibits selective or favored access, and once the information is disclosed to one requester, it becomes public for everyone (Section 7921.505(b)).[5]

Best practice: Forward all records requests to the agency's designated person to process and respond to the requests. If a records request is being denied, provide as much information as possible so a thorough explanation for the denial can be prepared.

What Are Public Agencies Not Required to Do Under the CPRA?

- The CPRA does not require creation or preparation of a record or document that does not exist at the time of the request to satisfy a records request *(Sander v. Superior Court* (2018) 26 Cal. App.5th 651, 669.)
- Requests for records generated in the future are not allowed
- Conduct research, complete checklists or answer questions
- Create a "privilege" log of withheld documents *(Elgin Haynie v. Superior Court* (2001) 26 Cal. 4th 1061.)

What Public Agencies Cannot Do Under the CPRA:

- Require a records request be submitted in writing – verbal records requests are valid *(Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal. App. 4th 1381, 1392.)
- Charge for staff time to gather, review or redact documents *(North County Parents Organization, et al. v. Dept. of Education* (1994) 23 Cal. App. 4th 144, 148.)
- Limit access to records based on the purpose of the request (Section 7921.300[6])
- Ask requesters to provide identification before disclosing records (Section 7921[7]; Cal. Const. Art. I, section 3(b)(1); *Connell v. Superior Court* (1997) 56 Cal. App. 4th 601, 611-612 [disclosable records must be made available to any person].)

[5] *Formerly* Government Code section 6254.5
[6] *Formerly* Government Code section 6257.5
[7] *Formerly* Government Code section 6250

Which Records Are Exempt From Disclosure?

The "Laundry List"

Many types of records are listed as exempt from disclosure in the CPRA. In the Government Code, there is a "laundry list" of records that are not required to be disclosed. The exempt records include:

- Preliminary drafts, notes and other "temporary" documents that are not kept by an agency in the ordinary course of business, as long as the public interest in withholding these "draft" documents clearly outweighs the public interest in disclosure (Section 7927.500[8])
- Records pertaining to pending litigation to which the agency is a party (Section 7927.200[9])
- Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy (Section 7927.700[10])
- Investigatory Records (Section 7923.600-7923.625[11])
- Voter Information (Section 7924.000[12])
- Tax Payer Information (Section 7925.000[13])
- Real estate appraisals made for or by a public agency, related to a property acquisition (Section 7928.705[14])
- Attorney-client privilege (Section 7927.705[15]).

Other Exemptions – The "Catch-All" Exemption

Other CPRA sections protect various records or information from disclosure, including utility customer information, personal addresses in DMV records and archaeological site information. Sections

[8] *Formerly* Government Code section 6254(a)
[9] *Formerly* Government Code section 6254(b)
[10] *Formerly* Government Code section 6254(c)
[11] *Formerly* Government Code section 6254(f)
[12] *Formerly* Government Code section 6254(f)
[13] *Formerly* Government Code section 6254(i)
[14] *Formerly* Government Code section 6254(h)
[15] *Formerly* Government Code section 6254(k)

7930.105[16] through 7930.215[17] contain an alphabetical listing of records and information that are protected from disclosure in other California statutes (from "Acquired Immune Deficiency Syndrome, blood test results" to "Youth Authority" records).

Section 7922.000[18] is known as the "catch-all" exemption. It includes a general balancing test for withholding public records. To withhold documents under the "catch-all" exemption, an agency must demonstrate that the public interest served by withholding the documents "clearly outweighs" the public interest served by disclosure.

Best practice: Legal counsel can help determine if a document should be withheld under the "catch-all" exemption and evaluate if the reasons for withholding the document will meet the balancing test in Section 7922.000[19].

Police Records

There were recent changes in the law regarding the disclosure of certain police records. Starting from January 1, 2019, a new law significantly changed the accessibility of police personnel records that were once confidential and not disclosable to the public, including the press. Senate Bill 1421 amended Penal Code Section 832.7, allowing for the release of records related to officer use-of-force incidents, sexual assault, and acts of dishonesty. Previously, access to such records required a Pitchess motion and a private review by a judge or arbitrator during a legal proceeding.

Senate Bill 1421 made police officer personnel records relating to the following incidents subject to disclosure:

- Discharge of a firearm at a person by a peace or custodial officer
- Use of force by a peace or custodial officer against a person that results in death or great bodily injury

[16] *Formerly* Government Code section 6276.02
[17] *Formerly* Government Code section 6276.48
[18] *Formerly* Government Code section 6255(a)
[19] *Formerly* Government Code section 6255(a)

- A law enforcement or oversight agency's sustained finding that a peace or custodial officer engaged in sexual assault involving a member of the public
- A sustained finding of dishonesty by a peace or custodial officer directly relating to the reporting, investigation or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace or custodial officer

The California Senate passed Senate Bill 16 ("SB 16") on September 2, 2021, and it was signed into law on September 20, 2021. SB 16 is part of ongoing efforts to enhance transparency in law enforcement. In 2018, Governor Brown signed SB 1421 into law, which made significant changes to the confidentiality of certain categories of peace officer personnel records. SB 16 builds upon this by expanding the types of peace officer personnel records that can be disclosed to the public and used as evidence in court. It also mandates that law enforcement agencies review the personnel file of a lateral peace officer before employing them.

SB 16 extends the categories of peace officer personnel records that can be disclosed under a CPRA request to include:

- Sustained findings related to unreasonable or excessive force
- Sustained findings where an officer failed to intervene during another officer's clearly excessive or unreasonable use of force
- Sustained findings related to an officer's conduct involving prejudice or discrimination based on a specified protected class (including verbal, written, online, recorded, or gestural behavior)
- Sustained findings related to unlawful arrest or search conducted by an officer

Finally, as of July 1, 2019, Assembly Bill 748 ("AB 748") requires video and audio recordings of "critical incidents" be disclosed. These include incidents include:

- Discharge of a firearm at a person by a peace or custodial officer
- Use of force by a peace or custodial officer against a person that resulted in death or great bodily injury

Proceed With Caution

Agencies relying on an exemption to withhold a public record must be aware that:

- Exemptions must be "narrowly construed" – the meaning of an exemption cannot be stretched to fit a document.
  - EXAMPLE: The exemption for "preliminary drafts" protects only actual "working draft" documents. If an agency keeps draft versions of a document along with the final version, those drafts are not exempt from disclosure, even if they are stamped "draft."
  - EXAMPLE: The "pending litigation" exemption applies only to documents specifically prepared for litigation. An existing record may suddenly become important in a lawsuit. However, if the record was disclosable before the litigation, it remains disclosable during and after the litigation.
- Exempt information must be redacted from otherwise disclosable public records and the redacted versions must be disclosed (Section 7922.525(b)[20].
- Exemptions are generally discretionary, not mandatory. An agency may waive an exemption and disclose an exempt document. However, once the exemption is waived, that same document must be disclosed to anyone else who requests it (Section 7924.000[21]).

Some Records Are NOT Public

- Finally, the CPRA identifies certain documents and information that are "...not deemed to be public records." Such records and information are confidential and must not be disclosed to the public. These documents include initiative/referendum/recall petitions, the identities of persons requesting bilingual ballots, voter registration information, trade secrets (as defined in Section 7924.510[22]), Social Security numbers, public library patrons' records, family welfare records, birth records, adoption information, and personal information on various public employees.

Best practice: Avoid accidentally releasing exempt records or information for a CPRA request. Always check documents for attorney-client communications, Social Security numbers, home addresses, etc.

Can We Charge for Providing Documents?

[20] *Formerly* Government Code section 6253(a)
[21] *Formerly* Government Code section 6254.4
[22] *Formerly* Government Code section 6254.7(d)

- **Inspection of Records:** Public agencies cannot charge requesters to inspect documents, even if documents must first be copied and redacted before inspection.
- **Copies of Paper Records:** For requests for paper copies of public records, public agencies may charge the "direct costs of duplication," which includes only the cost of making the copy. Such cost cannot include staff time for retrieving, handling, reviewing, or redacting documents. Public agencies usually charge a "per page" copying fee for paper copies that typically ranges from 10 to 25 cents per page, depending on each agency's actual cost for producing a paper copy. However, copy charges for certain documents are set by statute, including documents under the Political Reform Act (e.g., 10 cents per page for Form 700, campaign statements, etc.) and certified payroll records under the Labor Code ($1 for the first page, 25 cents for each additional page).
- **Copies of Electronic Records:** In certain situations, the CPRA allows public agencies to charge the cost of staff time to construct electronic records and for necessary programming and computer services. Typically, this cost is the hourly fee of the staff member who will provide these services. Public agencies may also charge for the cost of any materials used to provide electronic records (CDs, DVDs, flash drives, etc.). However, public agencies cannot charge a fee for simply attaching an existing electronic record to an email and sending it to a requester or uploading an electronic record to a file-sharing site (e.g., Dropbox).
- **Redactions for Body-Worn Camera Footage:** Local agencies cannot charge a requester for redacting a video or audio file. In National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward (2020) 9 Cal. 5th 488, the court reaffirmed that local agencies may only charge the costs of duplication and not for other ancillary costs, such as retrieval, inspection, and handling of files.

Best practice: Only charge "direct cost" for paper copies and any materials needed to provide electronic records.

[22] *Formerly* Government Code section 6254.7(d)

How Is the CPRA Enforced?

A person can file a lawsuit against a public agency to enforce the right to inspect or receive a copy of a public record (Sections 7923.000 & 7923.005[23]). If the court finds that the public agency's decision to withhold records was not justified, the public agency will be ordered to disclose the records. Also, the court has the discretion to award court costs and reasonable attorneys' fees to the prevailing plaintiff, to be paid by the public agency. (*Riskin v. Downtown Los Angeles Property Owners Association* (2022) 291 Cal.Rptr.3d. 534.)

Alternatively, if the court finds that the plaintiff's case was "clearly frivolous," it will award court costs and reasonable attorney fees to the public agency, to be paid by the plaintiff (Section 7923.115(a)-(b))[24].

To prevent an agency from disclosing a record, a person can file a "reverse-CPRA" action. As described by the Second District Court of Appeal in *Marken v. Santa Monica-Malibu Unified School District*, the action generally involves a third-party seeking a court order stopping disclosure on grounds it would infringe that party's rights and/or is unauthorized by law.

Best practice: Legal counsel can assist in navigating the complexities of the CPRA. If uncertain about what is disclosable under the CPRA, it's always a good idea to consult with legal counsel.

[23] *Formerly* Government Code section 6258

[24] *Formerly* Government Code section 6259(d)

Avoiding Financial Conflicts of Interest — Should I Participate in this Decision?

The Political Reform Act of 1974 (Gov. Code Sections 81000-91014) forms the foundation for California's financial conflict of interest laws for public officials. The purpose is to cover both actual and apparent conflict of interest situations between a public official's private interest and their public duties.

The basic rule is that no public official shall make, participate in making, or in any way attempt to use their official position to influence a governmental decision if they know, or have reason to know, that they have a financial interest in the decision.

Who Should Avoid Financial Conflicts of Interest?

All decision-making public officials for local government agencies which includes every member, officer, and employee of a local government agency, as well as consultants to a local agency who meet certain criteria. Public officials may also include members of public agency boards, councils, commissions, and committees with decision-making authority.

If you are a public official who may make, participate in making, or in any way influence a public agency decision, this resource will help determine whether you have a potential financial conflict of interest that has to be addressed.

Do I Have a Financial Conflict of Interest Under the Political Reform Act?

Before making a decision or discussing a future decision of your public agency, try to answer the following questions:

1. Will you be "participating in a decision?"

You are "participating in a decision" of your public agency by doing any of the following:

- **Making an actual decision —** Voting, making an appointment, or taking an action that obligates or commits your public agency.
- **Contributing to the decision-making process —** Making a recommendation or participating in negotiations about the public agency decision.
- **Influencing the decision —** Making your position known, discussing the decision with other agency officials, providing reports, or influencing others (such as staff or consultants) who are involved in the decision-making process.

2. Does the decision affect one or more of your "financial interests?"

A financial conflict of interest can exist if the public agency decision you are participating in affects (positively or negatively) any of your "financial interests" as described in the Act and listed here:

- **Business Interest:** Any for-profit business entity in which you or your immediate family (spouse and dependent children) have a direct or indirect investment worth $2,000 or more. You also have a financial interest in any business in which you are an employee, manager, officer, director, owner, partner or trustee, regardless of whether you have an investment or receive income from the entity.
- **Source of Gross Income:** A public official has a financial interest in any source of income that is either received by or promised to the official and totals $500 or more in the 12 months before the decision. Income is very broadly defined as "a payment received" with few exceptions. Examples of income include salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, loan, forgiveness or payment of debt, or community property interest in income of a spouse. The FPPC regulations make it clear that a conflict of interest results whenever either the amount or the source of an official's income is materially affected by a decision. Also, a decision that foreseeably will materially affect an official's employer would generally necessitate a disclosure and disqualification, even if the amount of income received by the official was not affected. Common exclusions from income include loans from commercial lending institutions in the ordinary course of business made on terms available to the general public, campaign contributions, government salaries and benefits, monetary inheritances, and alimony or child support payments.
- **Gift Interest:** Any gift(s) — cash, goods or services — promised or given to you in the past 12 months by a person, business, or other entity totaling $630 or more in value. The dollar limit is adjusted biennially in odd-numbered years based on the Consumer Price Index (CPI).
- **Real Property Interest:** Any real property interest, including ownership, mortgage, lease, easement or license, or option to acquire such interest in real property, located in the public agency's jurisdiction owned directly or indirectly by you or your immediate family if the fair market value of the real property interest is $2,000 or more. Month-to-month tenancies are not considered an interest in real property. Interest in real property also includes a pro rata share of a business entity's real property or trust in which the public official or immediate family owns, directly or indirectly, a 10 percent interest or greater.

- **Personal Financial Interest:** Any personal expense, income, asset, or liability of you or your immediate family (spouse and dependent children).

3. Will the public agency decision have a reasonably foreseeable "material financial effect" on any of your financial interests?

Participation in a decision that affects your financial interest creates a conflict of interest only if it is reasonably foreseeable (a realistic possibility) and the effect is "material."

In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result can be expected only in extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest other than an interest explicitly involved, described above, the following factors should be considered:

a. The extent to which the occurrence of the financial effect is contingent upon intervening events.

b. Whether you should anticipate a financial effect on your financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

c. Whether you have a financial interest that is of the type that would typically be affected by the terms of the governmental decision.

d. Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of your financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

This is not an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable.

"Material" means important or significant, and often depends upon whether or not the interest is explicitly involved. For each financial interest you identified as potentially affected by the decision, review the corresponding analysis below to determine whether the effect is material.

- **Business, Source of Income, and Gift Financial Interests —** Explicitly Involved: If your financial interest is explicitly involved (i.e., the subject of or a named party in the decision), the financial effect of the decision on your financial interest is presumed to be material unless you can demonstrate that the decision will not have a financial effect on your financial interest.
- **Business, Source of Income, and Gift Financial Interests —** Not Explicitly Involved: A reasonably foreseeable financial effect on a business entity is material if it results in (1) a change in gross revenues or in the value of assets or liabilities by at least $1 million or 5 percent of annual gross revenues, or (2) a change in business expenses of $250,000 or more or of 1 percent of annual gross revenues and the change is at least $2,500; or if the business entity owns property that is the subject of the decision or would be substantially effected by the decision.
- **Real Property Interest —** Explicitly Involved: When your real property interest is explicitly involved in a public agency decision, the reasonably foreseeable financial effect is presumed material. A real property interest is explicitly involved when the decision includes matters such as the property's zoning, annexation, sale, lease, licensed or permitted use, taxes, fees, or improved services to the property.
- **Real Property Interest —** Not Explicitly Involved: When the real property is not explicitly involved, a decision's reasonably foreseeable financial effect is presumed material if, among other things, any part of the property in which you have a financial interest is within a 500-foot radius of the real property involved in the decision, unless it is clear the decision will not have a measurable impact on your property. If your property is located more than 500 feet, but less than 1,000 feet, from the property line of the property involved in the decision, the financial effect is material if the decision would have certain specified impacts, such as changing the parcel's view, noise or traffic level, development or income-producing potential, best use, character, or market value.

  If the real property in which you have a financial interest is 1,000 feet or more from the property involved in the decision, the financial effect of the decision on your real property interest is presumed not to be material unless the specific circumstance of the decision and the nature of your property interest make it reasonably foreseeable that the decision will have a significant financial effect on your real property interest. Factors include the development potential of the property, use of the property, and character of the neighborhood.

- **Real Property Interest —** Leasehold Interest: If you have a leasehold interest in real property as opposed to an ownership interest, your leasehold interest in the property is material if the decision changes the termination date of the lease, affects the potential rental value of the property, changes your actual or legally allowable use of the property, or impacts your use and enjoyment of the property
- **Personal Financial Interest:** The financial effect of a decision on your personal financial interest is material if the decision may result in you or your immediate family member receiving a financial benefit or loss of $500 or more in any 12-month period due to the decision.

5. Does the decision affect your financial interests differently from the "public generally?"

Even if you answered "yes" to the first three questions, you have a financial conflict of interest only if the decision affects you differently from the public in general. The financial effect of a decision is indistinguishable from its effect on the public generally if you establish that a significant segment of the public is affected and the effect on your financial interest is not unique compared to the effect on the significant segment.

A significant segment of the public is at least 25 percent of:

- **Business Interest —** All businesses or nonprofit entities within your jurisdiction.
- **Real Property Interest —** All real property, commercial real property, or residential real property within your jurisdiction.
- **Individuals —** All individuals within your jurisdiction.

  If you are elected to represent a specific district/area in the public agency, your "jurisdiction" is that district/area; otherwise, your jurisdiction is the agency's jurisdiction.

  A significant segment of the public is at least 15 percent of residential property within your agency's jurisdiction if the only interest you have in the decision is your primary residence.

  Specific rules exist for special circumstances involving public service and utility charges, general use or licensing fees, decisions with limited neighborhood effects, rental properties, required representative interests as part of a board or commission membership, states of emergency, and governmental interests.

What Should I Do if a Financial Conflict Exists?

1. Do not participate in the decision.

If you answered "Yes" to all four questions above, you most likely have a financial conflict of interest and you are prohibited from participating in the decision-making process. Do not participate in the discussion or render any opinion or advice, and do not act in any way that might influence the decision.

2. Disclosure and recusal are required.

State law requires you to publicly disclose your financial conflict of interest on the record and excuse yourself from the meeting while the matter is being considered in open session. You generally do not have to excuse yourself on consent calendar items unless the item is pulled, but must publicly disclose the type of your financial interest (i.e., business entity, real property, etc.) that gives rise to the conflict of interest.

3. Do not commit violations of the Political Reform Act (PRA)

Violation of the PRA can result in administrative fines, civil penalties, and criminal sanctions.

Other Conflict of Interest Laws

Two other key financial conflict of interest laws apply to public officials that you may encounter as either a board or council member, public employee, or consultant in the decision-making process:

1. Self-Interested Contracts (Government Code Section 1090)

This key law prohibits you, as a local official or employee, from voting on, discussing, or negotiating a proposed contract or sale with your public agency if you could receive some financial gain or loss from the contract or sale. Even if you abstain as a board or council member, the entire board or council is prohibited from entering into the contract unless an exception applies. Any contract signed by a public agency board or council in violation of Section 1090 is void. The rule is different if you are a decision-making employee not on the board or council. A public agency employee may disclose their financial interest in the public agency contract and be disqualified from any involvement, allowing the board or council to enter the contract legally. Violation of this law will void the contract or sale and may result in permanent forfeiture of office for elected officials. There are limited exceptions to this law that are beyond the scope of this resource.

2. Campaign Contributions (Government Code Section 84308)

If you are a directly elected or appointed public official, this law (known as the Levine Act) prohibits you from participating in proceedings involving licenses, permits, or other entitlements for use that affect a person, business, or other entity from which you have received a campaign contribution of more than $500 within the preceding 12 months, and requires you to disclose on the record the receipt of any such contribution. In addition, this law prohibits you from accepting campaign contributions of more than $500 from a party or participant in the proceeding for 12 months after a final decision is rendered in a proceeding.

Conflict in Government Contracts — Government Code Section 1090

Generally, government officials or employees with personal financial interests in a government contract cannot participate in or influence the creation of that contract. California Government Code section 1090 ("Section 1090") prohibits members of the Legislature, state, county, district, judicial district, and city officers or employees (and certain consultants) from having a financial interest in any contract made by them in their official capacity or by any governmental body or board of which they are members.

A contract made in violation of Section 1090 carries with it serious consequences. With certain exceptions for independent contractors, a willful violation is punishable as a felony and the offending person may be banned from office for life. Prosecutors and the Fair Political Practices Commission (FPPC) can sue for civil penalties or impose administrative fines. Contracts made in violation of Section 1090 are void, even when the contract is to the advantage of the government agency. All benefits flowing from the contract obtained by the non-government entity may be restored to the agency (disgorged) without any offset to the other contracting party for goods or services provided.

Members of state or local governing bodies and state or local employees are generally subject to Section 1090. Consultants and independent contractors of an agency may be subject to Section 1090 if they have responsibilities for contracting decisions, act in a "staff capacity" such that they are "transacting on behalf of the government," or are otherwise involved in the making of a government contract, unless they fall under the exceptions outlined in Section 1097.6. If you believe that Section 1090 may apply to your situation, you should engage qualified legal counsel to help you navigate these issues.

Do I Have a Disqualifying Conflict of Interest Under Section 1090?

The FPPC is the state body responsible for ensuring that California state and local governments operate ethically under the requirements of the Political Reform Act. The FPPC applies a six-step analysis to determine whether an official or employee has a disqualifying conflict of interest under Section 1090.

1. Is the official or employee subject to the provisions of Section 1090?

All state, county, district, judicial district and city officers and employees are subject to the law. Independent contractors may be subject to Section 1090 as well unless they fall under the exceptions outlined in Section 1097.6, which went into effect on January 1, 2024. Now, independent contractors who enter into a contract with a public agency to perform one phase of a project and seek then to enter into a subsequent contract for a later phase of the same project are not "officers" under Section 1090 if their duties

and services related to the initial contract did not include assisting the public agency with any portion of a request for proposals, request for qualifications, or any other subsequent or additional contract with the agency. However, even if independent contractors assist the public agency with contracting matters, they may enter into a subsequent contract with the public agency for a later phase of the same project so long as: (1) their prior participation during an initial stage of a project was limited to conceptual, preliminary, or initial plans or specifications; and (2) all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.

2. Does the decision or action at issue involve a contract?

One looks to general principles of contract law to determine whether a contract is involved in a process or decision. Sections 1090 and 1097 require that all transactions be viewed in a broad manner and avoid narrow and technical definitions of "contract." Under this law, "a contract" includes a request for proposal, MOU, construction contract, lease or other real property agreements, purchase orders and agreements, any exchange of goods or services for consideration whether in writing or not and grants of money or property or other things of value. Generally, a contract exists when two or more parties agree to exchange goods or services with the expectation that each will receive something of value in return.

3. Is the official or employee participating in the making of a contract?

"Making a contract" is broadly construed and includes any participation in the making of the contract including, but not limited to involvement in preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, solicitation for bids and other actions. The understanding of "participation" is very broad and requires careful analysis. Also, in relation to a public body, such as a city council or district board, when members of a public board, commission or similar body have the power to execute contracts, each member is presumed to be involved in the making of all contracts by his or her board regardless of whether the member actually participates in the making of the contract. The presence of one person with a financial conflict of interest in a contract prevents the entire body from acting on that contract. Thus, when council or board members are involved, it is irrelevant whether or not they recuse themselves

from the decision because the law usually presumes that the official was involved in entering the contract.

4. Does the official or employee have a "financial interest" in the contract?

A person has a financial interest in a contract if he or she might profit or suffer a loss from the contract in any way. Said another way, any kind of financial impact – good or bad – causes a conflicting financial interest. The impact need not even be certain. Although Section 1090 does not specifically define "financial interest," the term is liberally and broadly construed to include indirect, as well as direct interests. An indirect interest often arises when an official or employee has a business or financial relationship with a person or entity who is contracting with the government entity. A person is conflicted under Section 1090 when their financial interest might in any way prevent the person from exercising absolute loyalty and undivided allegiance to the best interests of the public agency. Any separate, personal interest of an officer or employee in a government-made contract may constitute an indirect interest. An official has a conflict of interest when that official's spouse has a financial interest in the making of the contract. This is because the law presumes that an official is financially interested in his or her spouse's income or financial interest.

5. Does either a "remote interest" or "non-interest" apply?

By law, there are various statutory exceptions to Section 1090's prohibition against an entire board or agency making a contract. Where the financial interest involved is deemed a "remote interest," as defined in Section 1091, the contract may be made if: (1) the officer in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records and (3) the officer abstains from any participation in the making of the contract.

Section 1091 provides a list of 17 "remote interests." These provisions are complex and one should not rely on the application of these exceptions without first consulting with counsel or seeking the advice of the FPPC.

Non-interests apply to all persons covered by Section 1090: Non-interests are set forth in Section 1091.5. There are 14 of these statutory non-interests. In essence, these constitute a legislative recognition that certain financial interests are so remote or speculative as to not require disqualification from participating

in the making of a contract, or which are designed to serve or accommodate some other public policy, such as one's interest in one's own salary from a government entity or the receipt of public services. A non-interest means a person is not disqualified from participating in the making of a contract. Some non-interests do still require the official to disclose the interest in the official records. Again, as with "remote interests," these non-interest exceptions are complex and one should seek the advice of legal counsel or the FPPC before relying on one of these statutory exceptions.

6. Does the Rule of Necessity apply?

The Rule of Necessity applies only to government entities, not individuals. In very limited circumstances, a Rule of Necessity has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. Under the Rule of Necessity, a government agency may acquire an essential good or service in an emergency when to delay the contract would be to the public detriment, or when no source other than that which triggers the conflict is available. When the Rule of Necessity applies, due to a conflict with an official on a multi-member board or body, the interested official must abstain from any participation in the decision.

What Are the Consequences if Section 1090 is Violated?

- With certain exceptions for independent contractors, a willful violation or aiding and abetting a willful violation of Section 1090 is punishable as a felony and carries a sentence of up to three years in state prison and a lifetime ban from holding office.
- A prosecutor or the FPPC can bring a civil action to collect civil fines of up to $10,000 or three times the amount of the benefit received under the contract.
- The FPPC can impose administrative fines of up to $5,000 per violation.
- The contract is void and suit may be brought to have the contract declared void.
- All proceeds, payments and profits received or obtained as a result of the contract must be returned to the government entity.
- Because most Section 1090 violations also violate the Political Reform Act's prohibition against having a financial interest in a governmental decision, the full array of penalties available under that Act also apply, including misdemeanor criminal liability, civil penalties, administrative fines and injunctive relief.

Completing a Statement of Economic Interests (Form 700)

The Political Reform Act (Gov. Code section 81000 et seq.) prohibits a public official from making, participating in making or using his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. (Gov. Code section 87100.) To help identify potential conflicts of interest, the PRA requires officials to file forms called Statements of Economic Interests, or SEIs, also known as Form 700s, disclosing personal assets and income that may be affected by participating in decisions of their position.

Public officials required to file SEIs are identified in Gov. Code section 87200 and in an agency's conflict of interest code. The PRA requires every public agency to adopt a code that provides disclosure and disqualification rules, identifies positions that make or participate in the agency's decision-making processes, and establishes categories of financial interests that are assigned to the designated positions based on their official duties.

Who Should File Form 700?

All public officials listed in section 87200, and public officials, employees and consultants identified in an agency's conflict of interest code or others in newly created positions, boards and commissions not yet covered under an agency's conflict of interest code.

General Process

The Fair Political Practices Commission (FPPC) is the state agency responsible for interpreting and administering the Act. Form 700 was developed by the FPPC for public officials to disclose personal financial interests, as required by law. Form 700 is used for both individuals filing under section 87200 and individuals filing under an agency's conflict of interest code. Form 700 and other documents are distributed by agency filing officers and filing officials to various filers. Filing an SEI is not a one-time event, but is done annually while the official retains the filing relationship with the agency, and is retrospective for reporting, disclosing activity for time periods prior to the filing date. All SEIs must have an original "wet" signature or be duly authorized by the filing officer to file electronically under section 87500.2.

There are three types of SEIs filed by public officials – Assuming Office Statement filed when first beginning duties with your agency or being sworn in, Annual Statement filed annually and Leaving Office Statement when an official's relationship with the agency has terminated. Form 700 is also used by candidates for filing a disclosure statement.

It is important to keep in mind that SEIs are signed under penalty of perjury (see Penal Code section 118) and are public records once filed.

- **87200 Filers —** As of January 1, 2026, SB 852 went into effect regarding 87200 filers who manage public investments; these filers now file with the Fair Political Practices Commission.

- **Code Filers —** Officials, Employees, and Consultants Designated in a Conflict of Interest Code: File with your agency, board or commission unless otherwise specified in the agency's conflict of interest code (e.g., Legislative staff files directly with FPPC). In most cases, the agency, board or commission will retain the SEIs.
- **Employees in Newly Created Positions of Existing Agencies:** File with the agency or its code reviewing body, if directed to do so.
- **Members of Boards and Commissions of Newly Created Agencies:** File with the newly created agency or its code reviewing body, if required.

Filing Deadlines and Reporting Periods

- **Assuming Office Statement –** Due within 30 days after the date of assuming office;
  - Disclose reportable investments and interests in real property held on the date of assuming office and reportable income, including gifts, loans and travel payments, received during the 12 months prior to the date of assuming office.
- **Exception:** If a filer assumed office between Oct. 1 and Dec. 31 and filed an assuming office statement, the first annual SEI would not be due until one year following the date specified in the agency's Code if the date is April 1 or earlier. (Regulation 18732.)
- **Note:** These deadlines are for filers to file or mail their SEIs to the agency officer/official, as required. The postmark date is the date of filing. The filing official has 5 days after the filing deadline or date of receipt for SEIs received after the deadline to process and forward SEIs filed by 87200 filers to the FPPC or other filing officer. (Regulation 18115.)

  There is no provision for an extension of time for filing an SEI unless the filer is serving in active military duty. Statements of 30 pages or less may be faxed by the deadline as long as the originally signed paper version is sent by first class mail to the filing officer/official within 24 hours.
- **Late Filing —** The filing officer who retains originally signed or electronically filed SEIs may impose a fine for any SEI that is filed late. The fine is $10 per day up to a maximum of $100. Late filing penalties may be reduced or waived under certain circumstances.

Persons who fail to timely file their SEIs may be referred to the FPPC's Enforcement Division (and, in some cases, to the Attorney General or district attorney) for investigation and possible prosecution. In addition to the late filing penalties, a fine of up to $5,000 per violation may be imposed.

- **Amending SEIs —** If an error has been made on an SEI, an amendment must be filed as soon as possible. SEIs may be amended at any time. Only the schedule that needs to be revised must be amended. It is not necessary to amend the entire filed form. Amendment schedules can be obtained from the filing officer or at www.fppc.ca.gov. An amendment can be filed in the same manner as the originally filed SEI; however, each page being amended must be signed.

What to Disclose:

Not everything is deemed reportable. Economic interests filers need to consider are reportable investments in businesses and business positions held, interests in real property, and sources of income, including gifts, loans and travel payments from third parties.

For code filers, reportable economic interests are determined by the agency's jurisdiction and the disclosure categories assigned to the filer's position. For 87200 filers, except for gifts, reportable economic interests are only limited by the agency's jurisdiction, and there is no jurisdiction limit applied for reporting sources of gifts. However, there are many reporting exceptions to be found under the gift regulations starting at Regulation 18940.

In addition to economic interests held and received by the filer, reportable economic interests include business investments and interests in real property held by the filer's spouse and dependent children, and income received by the spouse, if the interests and sources of income qualify under the reporting requirements as described above.

The term spouse includes registered domestic partners.

"Investments," including independent consulting or contracting businesses, are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous 2 years in the agency's jurisdiction.

Disclosure Requirements:

87200 filers must disclose:

- All investments in any business entity in which the filer, the filer's spouse or dependent children had a direct, indirect or beneficial interest totaling $2,000 or more.
- All interests in real property located in whole or in part within, or not more than two miles outside, the jurisdiction of the agency, in which the filer, the filer's spouse or dependent children had a direct, indirect or beneficial interest totaling $2,000 or more.
- All sources of income of $500 or more received by the filer or $1,000 received by the filer's spouse.
- All business positions held with each reportable business, even if no income was received.
- All gifts aggregating $50 or more from a single reportable source

Designated Positions Must Disclose:

It is the assignment of Disclosure Categories that tells the code filer what is reportable.

Categories must be assigned to code filers based on the duties and responsibilities of the position. Categories should be designed and assigned in an effort to prevent requiring over-disclosure or the disclosure of the types of assets that the position could not affect. In other words, if the position does not participate in decisions that could affect interests in real property, the person in that position should not be required to disclose interests in real property.

Code filers must disclose interests as listed above for 87200 filers, but are limited to categories assigned under their agency's conflict of interest code. If assigned, the filer must disclose all interests in real property located in, or not more than two miles outside, the jurisdiction of the agency, and all described investments and business positions in business entities, and sources of income, including gifts, loans and travel payments. As noted above, such investments are reportable if they are located in, doing business in, planning to do business in, or have done business during the previous 2 years in the agency's jurisdiction.

Reminder: Even if a code filer's assigned disclosure category does not specify the disclosure of gifts, the definition of income includes gifts. This means any source of a gift that would be reportable as a source of income would likewise be made reportable as a source of any gifts aggregating $50 or more during the reporting period.

The chart on the following page lists some common reportable and non-reportable economic interests. Refer to the Form 700 instructions and its Reference Pamphlet for more.

Public Access:

SEIs are public documents and must be made available by the agency for viewing and copying during regular business hours no later than the second business day after they are received by the filing officer. Access to the Form 700 is not subject to the Public Records Act procedures. SEIs may never be altered or redacted, although posted copies may have signatures and certain addresses blocked. No one may ask for the identity or completion of a form as a condition of access to SEIs. Reproduction fees of no more than 10 cents per page may be charged.

Things to Know:

- Know and understand your disclosure requirements.
- Know your agency's jurisdiction.
- You only need to disclose reportable investments and interests.
- Income from public agencies is not reportable.
- You are not required to report the same interest on duplicate schedules, e.g. income on Schedule A-2 and Schedule C.
- You only need to disclose gifts from reportable sources.

Common Reportable Interests	Common Non-Reportable Interests
SCHEDULE A-1 Investments less than 10%	
Stocks, including those held in IRAs and 401Ks, bonds, managed funds. Each stock must be listed.	Gov. bonds, insurance policies, mutual funds registered with the SEC, funds similar to mutual funds, like ETFs.
SCHEDULE A-2 Investments of 10% or more	
Business entities, partnerships, sole ownership, LLCs, investments held by business or living trust. (e.g., Form 1099 filers).	Bank accounts, money market, CDs, annuities.
SCHEDULE B Real Property	
Rental property, ownership interest, leasehold interest in filer's jurisdiction, or within two miles of the boundaries of the jurisdiction.	Primary personal residences; second homes used exclusively for personal purposes may not be reportable.
SCHEDULE C Income, Loans & Business	
Non-Governmental Salary/wages, per diem, reimbursements, spouse's income (50%), proceeds from any sale (i.e. home, car, boat), prizes, awards, personal loans. Note: that filers are required to report only half their spouse's or partner's salary.	Governmental salary, income from government entity, stock dividends, income from PERS.
SCHEDULE D Gifts $50+ from single source	
Tickets/Passes to events – sports/ entertainment, amusement parks, parking, food, wedding gifts, rebates, discounts.	Gifts from family, home hospitality, gifts of even exchange.
SCHEDULE E Travel Payments	
Payments, advances and reimbursements from third parties for travel and related expenses including lodging and meals.	Travel paid by official's agency, payments from non-reportable sources.

The Brown Act

The Ralph M. Brown Act (California Government Code Section 54950 through 54962), often referred to as “the open meeting law,” guarantees the public’s right to attend and participate in meetings of local legislative bodies. The act includes requirements that affect the taking of minutes, including what must be in different situations. This resource provides a summary of the Brown Act’s requirements for the minutes in various circumstances, including teleconferenced meetings, non-agenda items, and closed sessions.

In adopting the Brown Act in 1953, the California Legislature's intent was clear: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

By preparing accurate and complete minutes of discussions and actions undertaken by local government bodies, local agencies ensure the public receives an accounting of the important work carried out by their representatives.

SB 707

Effective January 1, 2026, SB 707 significantly modernizes the Brown Act, particularly its teleconferencing rules and meeting-access requirements, while preserving core open meeting principles. The following includes the significant changes with the following expanded public agency definitions:

- **Eligible Legislative Body (§54953.4):** City council (pop. ≥30k or in county ≥600k), county board of supervisors (≥30k), large special districts (revenue/employees/area thresholds), etc.
- **Eligible Subsidiary Body (§54953.8.6):** Advisory committees with no final action authority, some exceptions (remote meetings allowed with established physical location and ≥1 specified attendee)
- **Eligible Multijurisdictional Body (§54953.8.7):** Joint powers agencies or multi-agency bodies (remote limits, compensation for physical attendance only)

Teleconferencing (Section 54953, et seq.)

SB 707 reorganizes teleconferencing provisions and continues the "just cause" remote attendance rules in new sections while preserving traditional teleconferencing in § 54953.

- Record that an agenda including relevant teleconference information notice was posted, that a quorum participated from locations within the jurisdiction or a single primary location (depending on the type of teleconferencing used), and all other teleconference requirements were followed (Section 54953).
- "Just cause" expands in 2026 to include illness, childcare, family medical, military service, and medical or family emergencies

(Section 54953.8.3). If a member participates remotely for just cause, record:

- The reason stated on the record (in general terms, consistent with statute).
- That at least a quorum of the body attended in person at a single location open to the public.
- That the remote member disclosed whether any adult was present in the remote location and that person's relationship, as required by statute.

- For a state/local emergency (§54953.8.2): Determine whether emergency exists via majority vote and statutory definition, record use of alternative teleconferencing, public remote access provided, and specific provision cited.
- SB 707 allows agencies to permit attendance by a member of the legislative body via teleconferencing as a reasonable accommodation under applicable law, including the Americans with Disabilities Act (ADA). A member attending via an ADA reasonable accommodation counts as in-person for quorum purposes. Those attending in accordance with this section must still disclose any present adults and their relationship to them and participate via audio and camera, unless their disability prevents such.
- For Eligible Legislative Bodies only:
  - Confirm that the public was provided with a telephonic option or an audiovisual option to participate.
  - If a technical failure occurs:
    - Record the time the meeting recessed (meeting may resume if findings made after minimum of 1 hour).
    - Document the specific restoration efforts made by staff.
  - Note whether the meeting was successfully resumed or adjourned.

Eligible Legislative Bodies & 2026 Extra Obligations (Sections 54953.4)

1. Community Outreach.

Eligible legislative bodies must modernize how they invite the public to the table:

- **Electronic Agenda Requests:** Must provide a system for the public to request and receive agendas and documents electronically.

- **Dedicated Webpage:** Maintain a prominent, accessible webpage linked directly from the agency's homepage. It must clearly outline:
  - Procedures for public comment (in-person and remote).
  - Instructions for joining via two-way video or telephonic platforms.
- **Targeted Outreach:** Make "reasonable efforts" to notify groups that have traditionally not participated, including non-English media outlets and local civic engagement organizations.

2. Mandatory Disruption Policy

- Agencies must have a "plan B" for when technology fails.
- **Approval Deadline:** A formal policy must be approved in an open session (not on a consent calendar) by July 1, 2026.
- **Protocol:** In the event of an internet or phone service disruption, the body must recess for at least one hour to attempt a restoration of service before deciding whether to continue or adjourn.

3. Language Access & Translation

- **The 20% Threshold:** If 20% or more of the population speaks a specific language and speaks English less than "very well" (based on the latest American Community Survey data), the following must be translated:
  - The meeting agenda (must be posted physically and online).
  - Instructions for public participation and the dedicated meetings webpage.
- **Assistance:** Agencies must provide reasonable assistance to those using personal interpreters, such as allowing extra time for comment.

What to Include in the Minutes?

Open Sessions

- All actions taken by the legislative body in open session
- Any votes cast by members
- If a writing is a public record related to an agenda item for an open session of a regular meeting of a legislative body and is distributed to all, or a majority of all, of the members of a legislative less than 72 hours before that meeting, the writing shall be made available for public inspection (Section 54957.5(b))

Recommended: Note that you provided copy of full Brown Act to elected/appointed members upon taking office to demonstrate compliance (§54952.7)

Meeting Outside Jurisdiction

- Record reason for the meeting to be held outside jurisdiction (Section 54954)
- **Action on Non-Agenda Items**
- Emergency — Record that a majority vote was to invoke an emergency and a description of the emergency (Section 54954.2).
- Immediate Need — Note that a 2/3 vote of the legislative body present at the meeting or, if less than 2/3 of the members were present, a unanimous vote of those members present, was taken and the grounds were articulated by the body for invoking the rule (Section 54954.2).
- Adjourned Meetings (Section 54955)
- Special Meetings — A waiver of notice was agreed to by legislative body members (Section 54956).
- Emergency Meetings — Record special requirements for posting and what to include in the minutes (Section 54956.5).

Pre-Closed Sessions — Announcements

- Record that an open session announcement was made (Section 54957.7).
- Content — It may include a reference to the item as listed on the agenda and may be made at the location of the closed session as long as the public is allowed to be present at that location.
- Real Property — Record that a special announcement was made (Section 54956.8).
  - Special Announcement: Identify negotiators, the real property concerned, and the party whom negotiations are with.
- Pending Litigation — State on the agenda or announce the paragraph of Section 54956.9(d) that authorized the closed session.

Post-Closed Session Announcements

- A disclosure report may be made orally or in writing and may be made at the location of the closed session as long as the public is allowed to be present at that location.

Real Estate Negotiations

- Note whether a body finalizes a signed agreement (i.e., the other party signed before the agency signed) in closed session. (Section 54957.1(a)(1)(A).)
  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the acceptance action, (2) the voting tally, and (3) the substance of the agreement.
- However, if the other party or court must finalize the agreement (i.e., the other party signs after the agency signed), disclosure must be made as soon as the agency is informed of approval by the other party. (Section 54957.1(a)(1)(B))
  - No disclosure is required in open session, but disclosure must be made to any person who asks.
  - The report must include (1) the fact of the approval action, (2) the voting tally, and (3) the substance of the agreement.

Personnel Actions

- Record whether a body takes action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session. (Section 54957.1(a)(5))
  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the reportable action, (2) the voting tally, and (3) the title of the position involved.
- However, if the body takes action to dismiss an employee or not renew an employment contract, and the dismissal or nonrenewal is subject to further administrative remedies, disclosure must be made in open session at the first public meeting after exhaustion of the administrative remedies.
- If a body considers an action to dismiss an employee or not renew an employment contract, but ultimately retains the employee, no disclosure report is required (Attorney General Opinion - 89 Ops. Cal.Atty.Gen. 110 (2006)).

Labor Negotiations

- If a body approves an agreement that concludes labor negotiations with represented employees:

- Disclosure must be made after the agreement is final and has been accepted or ratified by the other party. The Brown Act does not specify whether this disclosure must be during open session or may instead be made only when asked.
- The report must include (1) the approval action, (2) the voting tally, and (3) the other party to the agreement.

Approval of Initiating or Intervening in Litigation

- If the body approves initiation of, or intervention in, litigation:
  - Disclosure must be made in open session during the same meeting.
  - The report must explain (1) that the body gave direction to initiate or intervene in litigation and (2) that additional particulars will, upon inquiry, be disclosed after the litigation formally commenced.
- If the litigation authorized by the body has formally commenced and disclosure would not jeopardize the agency's ability to effect service on parties or conclude existing settlement negotiations to the agency's advantage:
  - No disclosure is required in open session, but a report must be provided to any person who asks after the lawsuit is filed.
  - The report must include (1) the approval action, (2) the voting tally, (3) the defendants, and (4) particulars about the substance of the litigation.
- If the litigation authorized by the body has formally commenced and disclosure would jeopardize the agency's ability to effect service on parties or conclude existing settlement negotiations to the agency's advantage:
  - No disclosure is required in open session, but a report must be provided to any person who asks after process has been served on unserved parties, if that was the concern, or the settlement negotiations have concluded, if that was the concern.
  - The disclosure report must include (1) the approval action, (2) the voting tally, (3) the defendants, and (4) particulars about the substance of the litigation.

Approval of Certain Litigation Actions

- If a body approves a litigation defense, filing an appeal or filing an amicus curiae brief, then:

- Disclosure must be made in open session during the same meeting.
- The report must include (1) the approval action, (2) the voting tally, (3) the adverse parties (if known), and (4) the substance of the litigation at issue (Section 54957.1(a)(2)).

Approval of Settlement Agreements

- If a body gives approval to legal counsel to settle pending litigation and accepts a settlement offer signed by the opposing party in closed session:
  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the acceptance action, (2) the voting tally, and (3) the substance of the agreement.
- However, if the other party or court must finalize the agreement (i.e., the other party signs after the agency signed), when the settlement is final:
  - No disclosure is required in open session, but must be provided to any person who asks.
  - The report must include (1) the fact of the approval action, (2) the voting tally, and (3) the substance of the agreement.

Disposition of Claims

- If a body makes a decision pertaining to claims for the payment of tort liability, losses, public liability losses, or workers' compensation liability incurred by a joint powers agency or a local agency member of the joint powers agency:
  - Disclosure must be made after the agreement as soon as disposition is reached. The statute does not specify whether this disclosure must be during open session or may instead be made only when asked.
  - The report must include (1) the name of the claimant, (2) the name of the agency claimed against, (3) the substance of the claim, (4) the voting tally, and (5) any monetary amount approved for payment and agreed upon by the claimant.

Pension Funds

- If a body makes a pension fund investment transaction decision:
  - Disclosure must be made at the first open meeting

held after the earlier of (1) the close of the investment transaction or (2) the transfer of pension fund assets for the investment transaction.

- A roll call vote must be entered into the minutes of the closed session.
- The report must include (1) the approval action and (2) the voting tally.

Common Safe Harbor Listings for Closed Sessions

Conference with Real Property Negotiations (Section 54956.8)

- Property: Specify street address or, if no street address, the parcel number or other unique reference, of the real property.
- Agency Negotiation: Report the names of negotiators attending the closed session; if the specified negotiator cannot attend, announce who will attend at the open session before the closed session.
- Negotiating Parties: Specify the name of the party (not the agent).
- Under Negotiation: Specify whether the instruction to the negotiator will concern price, terms of payment, or both.

Conference with Legal Counsel — Existing Litigation (Section 54956.9(d)(1))

- Name of Case: Specify by reference to claimant's name, names of parties, case, or claim numbers.
- Case Name Unspecified: Specify whether disclosure would jeopardize service of process or existing settlement negotiations.

Conference with Legal Counsel — Anticipated Litigation

- Significant exposure to litigation under Section 54956.9(d)(2) or Section 54956.9(d)(3): Specify number of potential cases.
- The agency may also have to provide additional information on the agenda or in an oral statement before the closed session (Section 54956.9(e)(2)-(5)).
- Initiation of litigation under Section 54956.9(d)(4): Specify the number of potential cases.

Liability Claims for Insurance Pool JPAs or a Member Agency (Section 54956.95)

- Claimant: Specify the name unless unspecified under Section 54961.
- Agency Claimed Against: Specify the name of the agency.

Threat to Public Services or Facilities (Section 54957(a))

- Consultation with: Specify the name of the law enforcement agency and title of officer or name and title of the applicable agency representative.

Public Employee Appointment (Section 54957(b)(1))

- Title: Specify the description of the position to be filled.

Public Employment (Section 54957(b)(1))

- Title: Specify the description of the position to be filled.

Public Employee Performance Evaluation (Section 54957(b)(1))

- Title: Specify the position and title of the employee being reviewed.

Public Employee Discipline/Dismissal/Release (Section 54957(b))

- No additional information is required.

Conference with Labor Negotiators (Section 54957.6)

- Agency Designated Representatives: Specify the names of designated representatives attending the closed session; if the designated representative(s) cannot attend, announce who will attend at the open session before the closed session.
- Employee Organization: Specify the name of the organization representing the employee or employees in question.

  -or-

- Unrepresented Employee: Specify the position and title of the unrepresented employee who is the subject of the negotiations.

The Levine Act

The Political Reform Act of 1974 (Gov. Code § 81000 et seq.) prohibits agency officers from accepting, soliciting or directing a contribution of more than $500 from a party or participant (or their agents) while a proceeding involving a license, permit, or other entitlement for use, including a contract, is pending before the agency, and for 12 months after a decision, if the officer knows or has reason to know the party or participant has a financial interest in the decision. (Gov. Code § 84308.) This provision is commonly known as the “Levine Act.”

The Levine Act also requires agency officers who received a contribution of more than $500 within the preceding 12 months from a party or participant to disclose that fact on the record, and to recuse themselves from making, participating in making, or using their official position to influence a decision in the proceeding if the officer **willfully or knowingly** received a contribution exceeding the limit in the previous 12 months from a party, a participant or their agent.

Willfully or knowingly includes, among other things: actual knowledge of the contribution; a party or participant has made two or more contributions of more than $500 in the past; the officer personally solicited the contribution. A contribution being reported under campaign finance laws is not enough to prove actual knowledge.

Officers of public agencies as it relates to the Levine Act are considered anyone who is:

a. In an elected position;
b. A member of a board or commission (elected or appointed);
c. The chief executive of a state or local agency of any kind, including cities, districts, or joint powers agencies; or
d. In any position with decision-making authority with respect to certain proceedings and also a candidate for elected office or was a candidate for elected office in the 12 months before a proceeding.

Please note that the Levine Act also contains restrictions applicable to "parties," "participants," and "agents" to proceedings. Each of these types of individuals or entities are discussed below, but this resource is generally intended to inform Officers about their duties under the Levine Act.

If you believe the Levine Act may apply to your situation, you should engage qualified legal counsel to help you navigate these issues.

What Restrictions and Responsibilities Apply to Officers?

In an "entitlement for use proceeding," Officers are prohibited from accepting, soliciting, or directing a contribution of more than $500 from any party or a party's agent, or from any participant or a participant's agent if the Officer knows or has reason to know that the participant has a financial interest in the proceeding.

This prohibition applies while the proceeding is pending and for 12 months following the date of the final decision in the proceeding.

If an Officer willfully or knowingly received a contribution of more than $500 within 12 months before a proceeding from a party or party's agent, or a participant or participant's agent where the Officer knows or has reason to know that the participant has a financial interest in the proceeding, the Officer is prohibited from making, participating in making, or in any way attempting to influence the decision in the proceeding.

If the Officer has received a contribution of more than $500 from a party, participant, or agent within the 12 months before the proceeding, the Officer is required to disclose the contribution orally or in writing in the manner required by the Levine Act and implementing regulations.

What Proceedings Are Covered by the Levine Act?

A "proceeding" is broadly defined and includes decisions to grant, deny, revoke, restrict, agree to, amend, or modify any business, professional, trade, or land use licenses and permits, franchises, and *most* types of contracts.

Examples include decisions on professional license revocations, conditional use permits, rezoning of real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, service agreements, purchase orders, cable television franchises, garbage service franchises, building and development permits, public street abandonments, and private development plans.

However, a "proceeding" does not include competitively bid contracts, contracts under $50,000, labor contracts (such as MOUs with labor groups or project labor agreements), personal employment contracts (such as employment agreements with the local agency's executive or in-house legal counsel), contracts between government agencies, contracts where no party receives financial compensation, or periodic review or renewal of development agreements or competitively bid contracts with no material changes.

When Does a Proceeding Become "Pending?"

For Officers, a proceeding becomes "pending" when:

1. the decision is before the Officer or Officer's legislative body for consideration, such as when an item is placed on a legislative body's agenda for discussion or decision at a public meeting; or

2. the Officer knows or has reason to know the proceeding is before the Officer's agency for an action or decision, and it is reasonably foreseeable the decision will come before the Officer in their decision-making capacity.

(Please note that a proceeding becomes "pending" at a different point for parties, participants, and their agents. For these persons, it is "pending" when the matter is before the agency for action, such as when an application or proposal for a contract has been submitted.)

Who Is a Party, Participant, or Agent in a Proceeding?

A "party" means any person who files an application for, or is the subject of, a proceeding.

A "participant" is much broader and generally means a person who is not a party but who actively supports or opposes a particular decision in a proceeding *and* who has a financial interest in the decision.

For example, a person will generally be considered a participant if the person has a financial interest in a proceeding and communicates with an Officer or his or her agency for the purpose of influencing a decision in the proceeding. This includes when a person lobbies in person, testifies in person (such as during public comment), or otherwise acts to influence a proceeding by communicating with an Officer or the agency to influence the proceeding, whether in person or by other means.

A participant is considered to have a "financial interest" under the Levine Act in the same way that people or entities can have a financial interest for conflicts of interest under the Political Reform Act. For example, a participant may have a financial interest in a proceeding based on their interests in business entities, real property, sources of income, sources of gifts, or personal finances, and it has to be reasonably foreseeable that the proceeding would have a material financial effect on one or more of their financial interests.

An "agent" of a party or participant in a proceeding is a person who: (1) represents a party or participant for compensation; and who (2) appears before or otherwise communicates with the agency for the purpose of influencing the pending proceeding.

Can an Official Return a Contribution of $500+ to Participate in a Proceeding?

Yes, but there is a limited time to do so. Once the Officer knows or should have known about a contribution and a proceeding, the Officer may return the contribution within 30 days and participate in the proceeding.

For example, if a contribution was received from a party before the Officer knew or had reason to know a proceeding involving the party had become pending, the Officer could return the contribution within 30 days of becoming aware of the contribution or proceeding.

For a contribution received from a participant before the Officer knew or had reason to know the participant had a financial interest in the proceeding, the Officer has 30 days from knowing about the contribution or the financial interest in the proceeding, whichever is later.

For Officers who serve on a legislative body and would otherwise be disqualified under the Levine Act from participating in a proceeding, the Officer may still participate before returning the contribution if all the following criteria are met:

1. The decision is made at a public meeting of the legislative body,
2. the Officer knew or should have known about the contribution and proceeding for less than 30 days,
3. after learning of the contribution or proceeding and prior to taking part in any further discussion or decision, the Officer discloses the fact of the disqualifying contribution on the record of the proceeding as required under the Levine Act and states that they will return the contribution within 30 days from the date the Officer knew or should have known about the contribution and proceeding, and
4. the contribution is in fact returned within that timeframe.

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